

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**In re: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION**

THIS DOCUMENT RELATES TO

State of Nevada v. Abbott Laboratories, et al.,

Case No. CV02-00260 (Nevada I),

State of Nevada v. American Home Products, et al.,

CA No. 02-CV-12086-PBS (Nevada II), and

State of Montana v. Abbott Labs., Inc., et al.

CA No. 02-CV-12084-PBS

MDL No. 1456

Civil Action No. 01-12257-PBS

Judge Patti B. Saris

Chief Magistrate Judge Marianne B.
Bowler

**DEFENDANTS' MOTION FOR LEAVE TO FILE A REPLY BRIEF IN SUPPORT OF
THEIR EMERGENCY MOTION FOR AN ORDER HOLDING PLAINTIFFS IN
CONTEMPT, FOR PRESERVATION OF POTENTIALLY RELEVANT DOCUMENTS,
AND FOR AN ACCOUNTING OF SPOILIATED DOCUMENTS**

Defendants respectfully request leave to file a short, 5-page Reply Brief in Support of their Emergency Motion for an Order Holding Plaintiffs in Contempt, for Preservation of Potentially Relevant Documents, and for an Accounting of Spoliated Documents. A Reply Brief will assist the Court as it considers Defendants' Motion and Plaintiffs' Opposition. The Reply Brief presents additional facts ascertained at several depositions that were conducted after Defendants' Motion was filed. These facts specifically address the extent to which Plaintiffs have complied with their preservation obligations and rebut or provide additional context to certain factual assertions made for the first time in Plaintiffs' Opposition. The Reply Brief also corrects certain mischaracterizations made by Plaintiffs regarding the nature and scope of Defendants' Motion.

WHEREFORE, for the foregoing reasons, Defendants respectfully request that the Court grant this Motion and permit its Reply Brief.

Certification Pursuant to Local Rules 7.1 and 37.1

Pursuant to Local Rules 7.1(a)(2) and 37.1 of this Court, the undersigned counsel certifies that counsel for Defendants conferred unsuccessfully with Plaintiffs' counsel in an effort to obtain Plaintiffs' consent to the filing of a Reply Brief.

Respectfully submitted on behalf of all
Defendants in the Nevada and Montana actions,

/s/ Geoffrey E. Hobart

Geoffrey E. Hobart (BBO # 547499)

Mark H. Lynch

Ronald G. Dove, Jr.

COVINGTON & BURLING

1201 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

Telephone: (202) 662-6000

Facsimile: (202) 662-6291

Mark D. Seltzer (BBO #556341)

HOLLAND & KNIGHT LLP

10 St. James Avenue

Boston, MA 02116

Telephone: (617) 523-2700

Facsimile: (617) 523-6850

Frederick G. Herold

DECHERT LLP

1117 California Avenue

Palo Alto, CA 94304

Telephone: (650) 813-4930

Facsimile: (650) 813-4848

Thomas H. Lee II

DECHERT LLP

4000 Bell Atlantic Tower

1717 Arch Street

Philadelphia, PA 19103-2793

Telephone: (215) 994-2994

Facsimile: (215) 994-2222

*Attorneys for Defendant SmithKline Beecham
Corporation d/b/a GlaxoSmithKline*

January 6, 2006

Certificate of Service

I hereby certify that on January 6, 2006, I caused a true and correct copy of Defendants' Motion for Leave to File a Reply Brief in Support of Their Emergency Motion For An Order Holding Plaintiffs In Contempt, For Preservation Of Potentially Relevant Documents, And For An Accounting Of Spoliated Documents to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 in MDL No. 1456.

/s/ Ronald G. Dove, Jr.